

REMARKS

Formal Matters

Claims 1-9 are all the claims pending in the present Application. Applicant thanks the Examiner for withdrawing the rejections under 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,999,813 to Lu et al (“Lu”) in view of U.S. Patent No. 6,771,661 to Chawla (“Chawla”). Applicant traverses this rejection for at least the following reasons.

Claim 1 requires a “private branch exchange” which “comprises means for controlling the amount of resources allocated to each of said corporate radio terminals.” Claim 1 further requires that a “base station comprises means for sending a message indicating to said corporate radio terminals the amount of resources they are allocated.” In the amendment of August 17, 2007, Applicant asserted that the above quoted elements of claim 1 are not taught by Lu or Chawla. In particular, Applicant noted the Examiner’s statement that “Lu does not specifically disclose having [this] feature.” Applicant further extensively set forth the deficiencies of Chawla with respect to these features of claim 1.

In the Response to Arguments section of the present Office Action, the Examiner appears to assert that both Lu and Chawla disclose the above quoted features of claim 1. First, regarding Lu, the Examiner associates element 206 of Lu with the private branch exchange of claim 1. The Examiner asserts that the radio resource manager 254 of Lu controls the amount of resources allocated to terminals 212. The Examiner further asserts that the BTS 210 of Lu corresponds to the base station of claim 1, and provides resources to mobile units 212. Even if, arguendo, these assertions of the Examiner were accepted for the sake of argument, the acts of controlling or

allocating the amount of resources for terminals, or of providing resources to terminals, are distinct from the requirement of claim 1 which recites “sending a message indicating to said corporate radio terminals the amount of resources they are allocated.” As previously asserted in the Amendment of August 17, 2007, the allocation or control of resources does not necessarily require sending a message to terminals indicating the amount of those resources that are allocated to the terminals.

The Examiner cites a number of portions of Lu in support of the argument that the above quoted features of claim 1 are taught by Lu. However, none of the cited portions of Lu appear to teach or suggest “sending a message indicating to said corporate radio terminals the amount of resources they are allocated.”

For example, col. 18, lines 44-60 of Lu describe how the “hybrid network 500” allocates resources between non-native handsets and native MS units, but fails to describe any message being sent to the non-native handsets or MS units which “indicat[es] to said corporate radio terminals the amount of resources they are allocated.” Col. 6, lines 44-55 of Lu describe the cellular CPBX system, and describe how the CPBX network 200 may be coupled to a public network 202. Col. 7, lines 4-10 of Lu simply state that a CPBX subsystem 206, a BSC subsystem 208, a BTS subsystem 210, and MS units 212 and 214, are within standalone CPBX network 200. Col. 8, lines 11-24 and 41-47 of Lu describe an enhancement to the control over resources of the private standalone CPBX network, which permits an operator to tailor the private network resources to the number of MS units that are registered. Col. 10, lines 1-3 merely state that private MSC block 254 handles mobility management and radio resource management with the help of the PBX 256. Col. 5, lines 16-28 of Lu describe transceiver units 160 and 162 which output bearer data at 8 Kbps or 16 Kbps for various types of

communications. This portion also states that transceiver units output signaling information “which is packet information that is forwarded either to antenna subsystem 158 for transmitting to the MSs or to a base station control function (BCF) 166 for communicating with a base station controller (BSC) or a mobile services switching center (MSC).” Finally, the cited Figs. 3A through 4A and 7 merely show the construction or interrelation of components of the network, and fail to show particular types of communication or messages between the BTS 210 and the terminals 212 or 214.

Thus, although Lu does appear to disclose a private branch exchange, a base station, and terminals, as well as allocation of resources to the terminals, Lu fails to teach or suggest that a base station “comprises means for sending a message indicating to said corporate radio terminals the amount of resources they are allocated.”

Regarding Chawla, the Examiner again cites exactly the same portions of Chawla which were extensively addressed in the Amendment of August 17, 2007. “Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.” MPEP § 707.07(f) (emphasis added). In the instant Office Action, the Examiner fails to address Applicant’s assertion, set forth in the Amendment of August 17, 2007, that although Chawla describes configuring data communications devices with bandwidth allocation information at col. 10, line 65 - col. 11, line 34, Chawla clearly distinguishes between data communication devices and terminals 210-215, and therefore does not teach or suggest configuring the terminals 210-215 with bandwidth allocation information. Since the Examiner has failed to address this matter in accordance with MPEP § 707.07(f), Applicant respectfully requests that the finality of the present Office Action be withdrawn.

Finally, the Examiner includes a number of speculative statements asserting that the above-describe feature of claim 1 is inherent to Chawla. It is well-settled that for a claimed limitation to be inherent in a teaching, it must be shown that “the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” E.g., Ex parte Levy, 17 USPQ2d 1461, 1464 (U.S. PTO Bd. of Pat. App. & Interf. 1990) (emphasis in original). As noted in MPEP § 2112[IV] (8th ed. Rev. 5, Aug. 2006), “[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art.” (emphasis modified) (citations omitted).

The Examiner asserts that Chawla’s disclosure of a computer terminal performing high speed backup which requires 4 Mbps of bandwidth for one period and 2 Mbps of bandwidth for another period inherently requires that the computer terminal “must know how much bandwidth is allocated in order to perform backup.” The cited portion of Chawla, col. 13, lines 28-42, merely suggests that the bandwidth amounts of 4 Mbps and 2 Mbps are the bandwidths required to complete the backup within a certain time period. As one of ordinary skill in the art would recognize, a computer terminal need not have knowledge of the amount of bandwidth available in order to perform communications over a network. Ordinarily, a computer terminal will perform communications over a network without such information, and the throughput of its communications will vary over time depending upon available network resources, network traffic, or allocated bandwidth, without receiving any message from a base station indicating the amount of bandwidth “allocated” to it. Thus, one of ordinary skill in the art would not consider this feature of claim 1 to be strictly necessary for such a backup.

The Examiner next speculates that a computer terminal having a modem for communicating over the internet requires a meter indicating transmission parameters such as data and/or baud rate. This statement is merely speculative and fails to support the notion that a computer terminal must necessarily be sent a message indicating the amount of resources it is allocated.

The Examiner further speculates that a communication terminal may receive a busy signal “which corresponds to no resources available.” Such a feature is not evident in any of the portions of the references cited by the Examiner, and is not necessarily present in every communication system. Furthermore, even if such a busy signal were to be taught, it would merely indicate a temporarily high level of traffic, and not necessarily indicate the amount of resources allocated to a terminal by a “means for controlling the amount of resources allocated” in an private branch exchange, as required by claim 1.

Thus, the speculative statements addressed above fail to rise to the level of a sufficient “basis or reasoning” to support the Examiner’s assertion of inherency, as they do not show that the required features of claim 1 “necessarily flow[] from the teachings of the applied art.” Moreover, if the Examiner intends to rely upon official notice, the Examiner is respectfully requested to provide references in support of the argument, as the MPEP clearly states that “[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” MPEP § 2144.03[A].

Thus, Lu and Chawla, alone or in combination, fail to teach or suggest each and every element of independent claim 1. These references, therefore, fail to render claim 1 unpatentable.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of independent claim 1 and its dependent claim 8.

Independent claims 2 and 7 recite features similar to those of independent claim 1. Claims 2 and 7 are, therefore, also patentable at least for reasons analogous to those presented above with respect to independent claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of independent claims 2 and 7 and their dependent claims 3, 4, 5, 6 and 9.

With respect to dependent claim 3, the Examiner asserts that the feature “said amount of resources allocated to a corporate radio terminal depending on the profile of said corporate radio terminal stored in said database” is inherent to the teaching of Chawla. Although Chawla appears to describe a table 400, Chawla fails to teach or suggest that this table contains “user profiles of said corporate radio terminals” or that the amount of resources allocated to a corporate radio terminal “depend[s] on the profile . . . stored in said database.” Thus, for at least this additional reason, Applicant respectfully requests that the Examiner withdraw the rejection of claim 3.

With respect to dependent claims 6, 8, and 9, the Examiner also asserts, without pointing to any particular section of Chawla, that the system of Chawla “automatically and dynamically adjusts the amount of bandwidth for communication sessions according to situations such as times or events.” Applicant, however, fails to find such a teaching in either Lu or Chawla. Applicant, therefore, respectfully submits that neither Lu nor Chawla teach “automatically and dynamically” adjusting the amount of bandwidth. If the Examiner disagrees, Applicant respectfully requests that the Examiner provide support for such an assertion. Thus, for at least

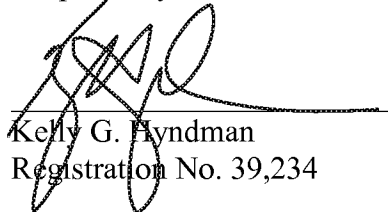
this additional reason, Applicant respectfully requests that the Examiner withdraw the rejection of dependent claims 6, 8, and 9.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

This Application is being filed via the USPTO Electronic Filing System (EFS). Applicants herewith petition the Director of the USPTO to extend the time for reply to the above-identified Office Action for an appropriate length of time if necessary. Any fee due under 37 U.S.C. § 1.17(a) is being paid via the USPTO Electronic Filing System (EFS). The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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